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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,666	12/28/2001	Emmett M. Flynn	9973-17	3650
1059	7590	07/19/2006	EXAMINER THAKUR, VIREN A	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			ART UNIT 1761	PAPER NUMBER
DATE MAILED: 07/19/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,666

Applicant(s)

FLYNN, EMMETT M.

Examiner

Viren Thakur

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No.

09/533692.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/28/2001.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/533,692, filed on March 23, 2000. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1761

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5,171,593) in view of Schechter (US 3,079,037) and in further view of Swett (US 3,511,288) and Reifers (US 3,027,997). With regard to Claims 1-3 and 6-8 Doyle discloses a method of packaging foodstuffs in a container (Figure 1, Item 20) having a top container surface (Figure 1, Item 16) and a bottom container surface (Figure 1, Item 18) for packaging produce (fruit or vegetable) (Column 1, Lines 53-55), having a ventilated overwrapping (Figure 1, Item 30, 28; Column 2, Line 14); the material being transparent for display of the produce (Column 2, Line 58); the sheet being folded underneath the bottom of the tray and heat sealed so as to secure overwrapping to the bottom of the tray (Column 3, Lines 47-52).

Doyle does not disclose a reusable lid for the container having a top lid surface and a bottom lid surface, the bottom lid surface being shaped to interconnect with the top container surface, and the top lid surface not being shaped to interconnect with the bottom container surface; the container and lid comprise a commercially available reusable plastic food storage container and

lid, wherein the top container surface comprises a ridge and the bottom lid surface comprises a groove.

With regard to Claims 1, 4-6, 9 and 10, Schechter discloses a reusable container with a lid (Figure 2, Item 19) for covering the container containing foodstuffs (Column 3, Lines 62-66); the lid also serving as a support for the bottom of the container (Figure 1, Item 10, 19) with the bottom lid surface being shaped to interconnect with the top container surface (Figure 2, Item 24); the top container surface comprising a ridge (Figure 2, Item 14) and the bottom lid surface comprising a groove (Figure 2, between item 23 and 24); the container and lid being made of a moldable plastic (Column 4, Lines 17-40). Schechter, additionally, indicates that one of the objects of his invention is preservation of the contents within the same container – reuse (Column 3, Lines 74-75, Column 4, Lines 1-2). Additionally, Schechter discloses one of the objects of his invention as providing the container with a transparent seal (Column 2, Lines 35-36) that provides viewing of the contents of the container, while the lid (Figure 2, Item 19) provides support. Furthermore, Schechter's invention is commercially manufactured (Column 4, Lines 8-16) and is a commercially reusable plastic food storage container containing foodstuff (Column 3, Lines 62-66). It is therefore obvious that a method must be incorporated in order for the container to be manufactured and packaged with food for retail purposes.

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify Doyle as taught by Schechter in order to use a

sealed container and a lid, thereof, that will also support the bottom of the container while displaying the contents for marketing, and that can cover the product when the contents are not being consumed. Such a modification will provide further usability of the package to promote purchasing (Column 4, Lines 41-43) and after subsequent reuse: to provide a simple efficient presentation, the container can be supported from underneath by the lid and then closed when desired (Column 3, Lines 74-75, Column 4, Lines 1-2). Schechter also teaches that a packaging and display container for food products can be made of a commercially available plastic material. Furthermore, it is also obvious from Doyle's wrapping process that when modified by Schechter to include a lid, that this lid will be secured underneath the container using the heat-sealed process. Although the wrapping is tucked underneath the tray, when a lid is incorporated underneath the tray, the wrapping needs to be adequate to maintain the position of the lid as well as the contents of the tray. To one skilled in the art it is obvious that if the wrapping cannot hold the added lid, then it would also not be able to secure the contents inside the tray. It is obvious that the ventilation provided in Doyle's plastic wrap is "breathable" since the microperforations provide for the exchange of gases and moisture generated by the produce from inside the tray. Additionally, it would have been obvious to a person having ordinary skill in the art that the container and method described by Doyle is a commercial food packaging method.

Doyle in view of Schechter does not disclose the top lid surface not being shaped to interconnect with the bottom container surface.

With regard to Claims 1 and 6, Swett discloses a method of storage and displaying bakery products in a container having a base portion that contains a food product, which can be placed on top of the covering lid portion, for displaying purposes. The bottom portion of the lid interconnects with the top portion of the container (Figure 3, Item 21 and Item 17) and when positioned opposite of the initial orientation (Figure 1), the top lid surface does not interconnect with the bottom container surface (Figure 7, Item 28 and Item 23; Column 4, Lines 7-9).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify Doyle in view of Schechter as taught by Swett in order to provide a displaying configuration in wherein removal of the lid from the bottom of the container without the need for disengaging an interlocking connection. Swett teaches that containers for enclosing a food product and then displaying the food product by placing the bottom of the container on top of the lid, whereby the base can be easily removed off of the lid due to the absence of any interlocking portions, are known. Such a modification would aide in preventing excessive force to be used when removing the container from the top of the lid, thus preventing spillage or damage to the display.

With regard to Claims 1, 3, 6 and 8, Reifers further discloses a method of packaging and displaying produce in a container having a base portion and being

overwrapped in order to provide rigid support for the contents of the container (Figure 3, Item 14, Item 20, Item 24). Reivers encircles the container and produce as opposed to tucking (Column 1, Lines 57-63). When wrapping the container the end portions are adapted to overlap each other and then heat-sealed together (Column 2, Lines 51-60).

It would have further been obvious to a person having ordinary skill at the time of the invention to modify Doyle in view of Schechter as taught by Reifers in order to provide an additional technique for wrapping the food packaging container. Such a modification will further assist in securing the lid to the bottom of the container when the package is wrapped and heat-sealed.

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 6 have been considered but are moot in view of the new ground(s) of rejection. The Examiner has provided new grounds of rejection based on the teachings of Doyle and Schechter, in further view of Swett and Reifers to address the overwrapping of the film to the bottom of the container, as well as not having the ability to interconnect between the top surface of the lid and the bottom surface of the container.

Conclusion

Art Unit: 1761

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kennedy (US 3,016,131) also teaches the concept of wrapping vegetables that are in a semi-rigid container with a clear plastic wrapping. The wrapping having openings used to secure the wrapping but that could be utilized for the permeation of gas from within the container; Harris (US 4,815,603) teaches the concept of having a clear plastic, ventilated wrapping to cover a container containing food products, such as fruits, which is then heat sealed to the container; Swett (US 3,307,603) teaches a container with a base that can be used to display the contents of the container when inverted. Thomas (US 2,113,245) teaches the concept of a combined container lid and display stand where the lid covers the contents of the container and is also used to display the contents while still within the container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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6/27/2006



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